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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ELIZABETH MULLER,

Plaintiff and Appellant,

v.

JOHN LLOYD et al.,

Defendants and Respondents.

B276653

(Los Angeles County
Super. Ct. No. BC579912)

ELIZABETH MULLER,

Plaintiff and Appellant,

v.

PRINCIPALS, INC.,

Defendant and Appellant.

B278196

(Los Angeles County
Super. Ct. No. BC579912)

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Law Office of Richard G. Novak and Richard G. Novak for Plaintiff and Appellant.

Law Office of Neil R. Anapol and Neil R. Anapol for Defendants and Respondents John Lloyd and Jim Weisenberg.

Beach Cowdrey Jenkins, Tomas E. Beach, Sean D. Cowdrey
and Darryl C. Hottinger for Defendant and Respondent
Principles, Inc.

INTRODUCTION

Plaintiff and appellant Elizabeth Muller brought a wrongful death action arising from the untimely death of her husband, Marc Muller. Marc was an alcoholic, and declined to enter treatment after his mother, a family friend, and two substance abuse counselors conducted an intervention. After the intervention failed, Marc went home and consumed a lethal amount of alcohol.¹

Elizabeth alleged defendants John Lloyd (Lloyd), Jim Weisenberg (Weisenberg), and Principles, Inc., doing business as Impact Drug Center (Impact), created a special relationship with Marc by conducting the intervention and therefore owed a special duty of care to prevent Marc's death. Elizabeth alleged the failure of the interventionists to monitor Marc after the intervention was a substantial cause of Marc's death.

The trial court sustained Lloyd, Weisenberg, and Impact's demurrers and Elizabeth now appeals. Because we conclude that Lloyd, Weisenberg, and Impact did not have a duty to Marc after the intervention concluded, we affirm.

¹ For purposes of clarity, we refer to members of the Muller family by their first names, intending no disrespect.

FACTUAL AND PROCEDURAL BACKGROUND

Marc Muller was a firefighter/paramedic in San Marino for 28 years. In 2012, Marc was placed on temporary disability to obtain arm surgery. The surgery was unsuccessful and Marc continued to be in severe pain. He determined that he could not return to work and informed the San Marino Fire Department of his permanent disability.

Beginning in 2009, Marc began drinking heavily; his consumption escalated following his departure from work. Beginning in the summer of 2013, Marc began to attend Alcohol Anonymous meetings, but continued to drink. He would start off his morning by consuming two large beers, which would arouse in him a very strong compulsion to consume more alcohol.

Elizabeth and Marc did not keep any alcohol in the home, so Marc frequently attempted to go to a liquor store to purchase more. Elizabeth would try to prevent Marc from leaving to purchase more alcohol by staying home with him, physically blocking the door, and taking away his car keys. Marc's mother, Betty Muller (Betty), and family friend Wendy Tuckley (Tuckley) often assisted Elizabeth in these efforts.

Marc was often aggressive and abusive when drunk, and displayed this behavior to and in front of Elizabeth, Betty, and Tuckley. On one occasion, Marc tried to choke Elizabeth when she tried to prevent him from leaving the house. Tuckley was present and called the police. Betty and Tuckley were also aware of an incident in which Marc, while intoxicated, held a knife to his head when Elizabeth prevented him from leaving the house to purchase alcohol. Betty and Tuckley knew from personal experience and both acknowledged to Elizabeth multiple times

that Marc should not be left home alone when intoxicated because he was a danger to himself and others.

In approximately July 2013, Betty approached Elizabeth about arranging an intervention for Marc. Elizabeth told Betty that Marc was involved in workers' compensation litigation with the San Marino Fire Department, was emotionally unstable, and would not be amenable to treatment until the litigation was resolved. Betty told Elizabeth that she would wait until the litigation resolved before pursuing an intervention.

Thereafter, without Elizabeth's knowledge, Betty contacted Weisenberg to arrange an intervention for Marc. Despite knowing that Elizabeth had not consumed alcohol for decades, Betty and Tuckley met with Weisenberg and with Lloyd and falsely told them that Elizabeth also had a serious alcohol problem and would not be supportive of the intervention. Betty and Tuckley explicitly told Weisenberg and Lloyd that Elizabeth should be excluded from the intervention. The group planned the intervention for the morning of September 11, 2013 and chose not only to exclude Elizabeth, but to ensure she would not find out about the intervention.

One week prior to intervention, Tuckley called Elizabeth and asked that she accompany her to a nonexistent medical appointment on the morning of September 11, and then have lunch with her afterward, thereby ensuring Elizabeth's exclusion from the intervention. On the morning of the intervention, Betty called Marc and asked him to come to her home to help her with her car. Tuckley then called Elizabeth and told her the medical appointment had been cancelled, but they would still meet for lunch. Marc drove alone to Betty's house and arrived intoxicated to find Betty, Tuckley, Weisenberg, Lloyd and others gathered at

Betty's home. Lloyd then proceeded to conduct the intervention. He offered Marc an opportunity to attend an alcohol rehabilitation program. Marc did not agree to enter treatment, but told the group he would speak to Elizabeth about the matter.

After the intervention, Marc drove home. Meanwhile, Tuckley and Elizabeth met for lunch and Tuckley informed Elizabeth of the intervention. Elizabeth returned home to find Marc in the laundry room, heavily intoxicated and unable to walk. She discovered a large, empty bottle of vodka in an outside trash can, which had been purchased and consumed that day. She brought Marc a pillow, helped him lay down in the laundry room, and periodically checked on him. At approximately 5:00 pm, Elizabeth realized she could not hear Marc breathing and she called 911. Paramedics took Marc to the hospital; at 6:00 pm his blood alcohol level was 0.355. Marc was on life support for six days and died on September 17, 2013. The coroner determined acute aspiration pneumonia was the immediate cause of death, alcohol intoxication was the underlying cause of death, and alcoholic cardiomyopathy and acute pancreatitis were each significant contributing factors in Marc's death.

Seven months later, in April 2015, Elizabeth filed a wrongful death action. After demurrers were sustained with leave to amend, Elizabeth filed a first amended complaint (FAC), alleging wrongful death against Betty, Tuckley, Lloyd, and Serenity Malibu, Lloyd's purported employer. At the time of the FAC, Elizabeth was unaware of Weisenberg's involvement. In the course of deposing Betty, Lloyd, and Tuckley, Elizabeth learned that Lloyd was not employed by Serenity at the time of the intervention, that Weisenberg participated in the planning

and execution of the intervention, and that Weisenberg was employed by Impact.

In March 2016, Judge Debre K. Weintraub overruled Betty and Tuckley's demurrer to the FAC.² The court determined that Betty and Tuckley knew Marc posed a risk of danger to himself while intoxicated and that it was foreseeable to them that Marc would purchase more liquor if left alone. The court concluded that Betty and Tuckley owed Marc a duty of care as a result of a special relationship that arose from their intervention efforts.

The court granted Elizabeth leave to file a second amended complaint (SAC). In the SAC, Elizabeth alleged that Weisenberg, Lloyd, and Impact undertook the intervention for compensation and assumed responsibility for Marc's welfare. As such, Weisenberg, Lloyd and Impact had a duty to take reasonable measures to protect Marc's health and welfare during and after the intervention, which they failed to do. Elizabeth alleged Weisenberg and Lloyd were in a position to know facts from which it might be reasonably concluded that Marc would likely harm himself in the absence of a safety plan, yet they failed to use reasonable care to prevent such harm.

After Weisenberg and Impact were served with the SAC, Weisenberg filed an affidavit against Judge Weintraub pursuant to California Code of Civil Procedure section 170.6. The case was then transferred to Judge Holly E. Kendig, who heard their demurrers to the SAC. Judge Kendig sustained Lloyd's, Weisenberg's, and Impact's demurrers, finding the

² The identity of the judicial officer is relevant to Elizabeth's arguments on appeal because she alleges Judge Weintraub's ruling on the FAC is incompatible with the ruling issued on the SAC by another judicial officer, Judge Kendig.

interventionists did not create a special relationship with Marc and therefore did not have an affirmative duty to prevent Marc from harming himself. The court also found that if there was a duty, plaintiff had failed to plead facts showing that a breach of that duty caused Marc's death.

DISCUSSION

We independently review the ruling on a demurrer and determine de novo whether the pleading alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) “We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken.’” (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 833.) “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.’” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

“[U]nder the common law, as a general rule,” one person does not have a duty to control the conduct of another. (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 435.) Courts have carved out an exception, however, in cases where the defendant “stands in some special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct.” (*Ibid.*) “Specifically, a duty to control may arise if the defendant has a special relationship with the foreseeably dangerous person that entails an ability to control that person's conduct.” (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619.) “A basic requisite of a duty based on a special relationship,” therefore, “is the defendant's ability to control the

other person's conduct." (*Smith v. Freund* (2011) 192 Cal.App.4th 466, 473.) And, "in special relationship cases, the foreseeability of the harm is critical to the existence of a duty." (*Ibid.*) A special relationship is only created when "the avoidance of foreseeable harm requires one to control the conduct of a third person." (*Megeff v. Doland* (1981) 123 Cal.App.3d 251, 257; see also *Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, 1014 [no special relationship because neither the injury nor the harm was foreseeable].)

Here, Elizabeth alleged in the SAC that Impact, Weisenberg, and Lloyd created a special relationship with Marc by undertaking the intervention and therefore had a duty to use reasonable care to prevent Marc from harming himself. To prevail, Elizabeth must demonstrate it was reasonably foreseeable to Weisenberg and Lloyd that Marc would likely harm himself if the intervention failed. We conclude that Elizabeth did not and could not carry that burden, given the facts alleged in the SAC.

First, there are no facts indicating that Marc appeared upset or otherwise unstable after the intervention. To the contrary, he appeared somewhat amenable to the idea of treatment in that he told the group he would discuss the issue with Elizabeth. The only people at the intervention who knew that Marc was, at times, emotionally unstable and a danger to himself were Betty and Tuckley. Elizabeth has not pleaded that Betty or Tuckley informed Weisenberg or Lloyd of Marc's past harmful conduct or that Marc had been emotionally unstable.

Elizabeth argues that the interventionists “were in a position to know facts from which it might be reasonably concluded that [Marc] would likely harm himself in the absence of a safety plan.” Yet Elizabeth did not plead any facts to show how or why Weisenberg and Lloyd were in a position to know about Marc’s history of harmful behavior when intoxicated. Accordingly, we agree with the trial court’s determination that Elizabeth’s assertion that Lloyd and Weisenberg “were in a position to know” is a conclusion unsupported by any facts. Such conclusions are disregarded on demurrer. (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

Elizabeth also argues that if the interventionists were not aware of Marc’s history of behaving in a manner dangerous to himself, it was because they were negligent in their preparation for the intervention. Elizabeth asserts that “trained interventionists know that if the risk of harm from the intervention is too great, it should not be undertaken until conditions have changed that reduce that risk of harm.” Yet, again, Elizabeth has not pleaded any facts showing that Weisenberg or Lloyd were aware of any risk of harm that might have resulted from the intervention.

Elizabeth also strongly suggested in the SAC that Weisenberg and Lloyd had a responsibility to independently investigate Marc’s history of harmful behavior or to “investigate the truth” of Betty and Tuckley’s allegations that Elizabeth had a drinking problem and was unsupportive of an intervention. Elizabeth, however, provides no authority for the proposition that interventionists must investigate the information provided to them by family members rather than trust the family’s knowledge and take their representations at face value.

Significantly, the false information Betty and Tuckley imparted to Lloyd and Weisenberg about Elizabeth would have given them reason to believe that reaching out to Elizabeth might actually be contrary to Marc's welfare.

We disagree with Elizabeth's argument on appeal that Judge Kendig's ruling on the SAC is incompatible with Judge Weintraub's ruling on the FAC. Elizabeth asserts Judge Kendig's conclusion that the SAC failed to sufficiently allege that the interventionists had an ability to protect Marcus is "irreconcilable" with Judge Weintraub's determination that the FAC sufficiently pleaded facts on this element with respect to Betty and Tuckley. Not so.

Judge Kendig ruled only on the demurrers brought by Weisenberg, Lloyd, and Impact. The facts alleged with respect to Weisenberg and Lloyd's role in the intervention are different than the facts alleged with respect to Betty and Tuckley's in two crucial respects: Betty and Tuckley lied to the interventionists about Elizabeth's willingness and ability to support and protect Marc; and there are no facts showing that Betty and Tuckley informed the interventionists about Marc's past destructive behavior and the family's previous efforts to control his drinking. It was therefore foreseeable to Betty and Tuckley that Marc might pose a danger to himself if left alone, and that Elizabeth might be able to intervene to ameliorate such harm. However, Betty and Tuckley's own actions ensured that it was decidedly not foreseeable to Weisenberg and Lloyd that Marc was a danger to himself or that the family could actually exert some control over Marc to prevent him from harming himself. Indeed, Betty and Tuckley deliberately gave the interventionists false information indicating that involving Elizabeth would actually be detrimental

to Marc. We therefore find no contradiction between the rulings by the two different judicial officers on the duties owed by the two sets of actors in this tragedy.

DISPOSITION

The judgment is affirmed. Parties are to bear their own costs on appeal.

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STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.